

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN ORDER)
AUTHORIZING NYTEL CORP. TO PROVIDE)
LOCAL EXCHANGE TELECOMMUNICATIONS)
SERVICES WITHIN THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE01030187

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N. J. S. A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated March 20, 2003, Nytel Corp. ("Petitioner" or "Nytel") respectfully filed an amended Petition with the Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based local exchange telecommunications services in the State of New Jersey.

Nytel was incorporated under the laws of the State of Delaware on November 13, 2000. Petitioner's principal offices are located at 60 Hudson Street, Suite 1008 New York, New York 10013.

Petitioner has submitted copies of its Articles of Incorporation, Delaware Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, Nytel was formed to provide resold facilities-based local exchange telecommunications services. Petitioner indicates it is currently providing services in the State of New York. According to the Petition, Nytel is presently providing resold interexchange telecommunications services in New Jersey. Nytel seeks authorization to provide resold and facilities-based competitive local exchange carrier services within the State of New Jersey. Although Nytel does not intend to offer services in the rural areas, to the extent any Incumbent Local Exchange Carrier ("ILEC") or Competitive Local Exchange Carrier in New Jersey is granted a small or rural carrier exemption pursuant to § 251 (f) of the Federal Telecommunications Act of 1996 in the future, Nytel will seek authority to operate in such service area(s) as well.

In its Petition, Petitioner states that it intends to subscribe to and resell all forms of local telephone service in the State of New Jersey including, but not limited to, message telephone service, wide area telephone service, WATS-like services, foreign exchange service, private lines, tie lines, access service, cellular service, specialized common carrier circuitry and satellite common carrier circuitry from communications common carriers and other services of communications common

carriers and other entities for resale to the customers of Nynetel. Nynetel intends to provide service to both residential and business class customers throughout New Jersey. Nynetel proposes to acquire and resell various voice and data communications services offered by communications common carriers, and to package and provide these services for the specialized functions and needs of its customers. In particular, Nynetel states in its Petition that services will be acquired from underlying communications common carriers at bulk rates and will be resold to Petitioner's customers, so that customers will benefit from reduced pricing. Nynetel asserts the local exchange services it proposes to offer will satisfy the minimum basic local service standards, including quality of service and billing standards, as the New Jersey Board of Public Utilities requires of the ILECs with which Nynetel seeks to compete. Initially, Nynetel will offer services to its subscribers through the resale of carriers' facilities and network elements in conjunction with its two Excel Lucent switches and 10 Cisco routers. These switches will provide both tandem and end office functions. Petitioner will also construct its own additional facilities, where warranted, the selection of which will be based upon Nynetel's analysis of facility cost, suitability, and quality of service. At the present time, Nynetel's plans are to deploy facilities-based and resold local and long distance telephone service through the deployment of its various switches.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8, N. J. A. C. 14:1-4.3 and 14:10 -1.16, which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in New York, New York. Petitioner represents that, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any and all reasonable expenses for the examination of said records.

With regard to its technical and managerial qualifications, Petitioner has submitted a list of corporate officers and directors along with management profiles who, according to Petitioner, have extensive managerial and operational experience in the telecommunications industry. Petitioner's states that the experienced management and operation expertise of the Nynetel team will enable Petitioner to begin offering competitive high-quality service immediately upon the grant of the authority requested herein.

In addition to reduced pricing, Petitioner asserts that the introduction of Nynetel services will promote competition and lead to greater efficiencies and more rapid introduction of new technologies in the use of telephone service. Moreover, Nynetel asserts that approval of this application will significantly serve the public interest through enhanced competition in the market for local services through the addition of a well managed new entrant into the market.

DISCUSSION

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Nytel's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange telecommunications services within the State of New Jersey subject to approval of its tariff and submission of pro forma financials for its New Jersey operations. The Board also FINDS that, in accordance with N.J.S.A. 48:2-59 and 48:2-60, and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and the Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of

these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 4/24/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION FOR AN ORDER AUTHORIZING
NYTEL CORP. TO PROVIDE RESOLD FACILITIES-BASED
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES
WITHIN THE STATE OF NEW JERSEY
DOCKET NO. TE01030187

SERVICE LIST

Serial No.	<u>Name and Address</u>	Serial No.	<u>Name and Address</u>
1	Petitioner's Contact Person: Mr. Francisco Sandoval, Accountant Nytel Corp. 60 Hudson Street, Suite 1008 New York, New York 10013	5	Board's Staff: Walter P. Szymanski, Director Division of Audits Board of Public Utilities Gateway Center Newark, New Jersey 07102
2	Petitioner's Attorney: Damien O. Del Duca, Esq. Madden, Madden and Del Duca, P.A. 108 Kings Highway East, P.O. Box 210 Haddonfield, NJ 08033	6	Board's Staff: Anthony Centrella, Director Division of Telecommunications Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
3	Ratepayers Advocate: Seema M. Singh, Esquire Acting Director and Ratepayer Advocate Division of Ratepayer Advocate 31 Clinton Street, 11 th Floor P.O. Box 46005 Newark, New Jersey 07101	7	Board's Staff: James F. Murphy, Chief Bureau of Revenue Requirements Division of Telecommunications Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
4	Ratepayers Advocate: Ava-Marie Madeam, Esquire Division of Ratepayer Advocate 31 Clinton Street, 11 th Floor P.O. Box 46005 Newark, New Jersey 07101	8	Board's Staff – DAG: Peter Tanella Department of Law & Public Safety Division of Law 124 Halsey Street, 5 th floor P.O. Box. 45029 Newark, New Jersey 07102